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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA ALLEN CONRAD,

Defendant and Appellant.

C089643

(Super. Ct. No. 19CF00780)

After defendant Joshua Allen Conrad pleaded no contest to false impersonation, the parties stipulated to a factual basis for the plea and the trial court imposed a sentence of three years in county jail. Defendant now contends the trial court erred in accepting the factual basis for his plea because the factual basis lacked a necessary element of the

crime of false impersonation. Although the People argue defendant waived his appellate claim, we will address the merits and affirm the judgment.

### BACKGROUND

Police responded to a reported shoplifting and determined that defendant was the suspect. After defendant identified himself to police as Larry V., an actual person, police found a methamphetamine pipe during a search of defendant incident to his arrest.

Defendant continued to identify himself as Larry.

The People filed a criminal complaint containing three charges against defendant: false impersonation (Pen. Code, § 529, subd. (a)(3) -- count 1),<sup>1</sup> petty theft (§§ 484, subd. (a), 488 -- count 2), and possession of drug paraphernalia (Health & Saf. Code, § 11364, subd. (a) -- count 3). Defendant pleaded no contest to count 1 and the remaining charges were dismissed. At the plea hearing, defendant signed a plea form and placed his initials next to numerous provisions contained on the form, including a provision that stated: “I understand as a term and condition of this plea that I waive any direct appeal I may have, absent any appeal to sentencing error.” The trial court solicited the factual basis of the plea from the parties after defendant pleaded no contest.

The prosecutor stated the factual basis for the plea, to which defense counsel stipulated: “On February 7th, 2019, Oroville Police Department was dispatched to Walmart for a shoplift. During that time, the defendant was identified as shoplifting from Walmart. He identified himself as Larry [V.] [¶] Search incident to arrest yielded a methamphetamine pipe. The defendant continued to assert that his name was Larry. And it wasn’t until booking that he was determined to be Joshua Conrad.” The prosecutor added that Larry V. is an actual person.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

The trial court ruled there was a factual basis for the plea and ordered defendant to serve the upper term of three years in county jail. Defendant obtained a certificate of probable cause for the claim he raises on appeal.

## DISCUSSION

### I

As a threshold matter, the People argue defendant waived his right to appeal all but sentencing error and thus his appellate claim is not cognizable. But the People acknowledge that with a certificate of probable cause in hand, defendant may argue the waiver is not enforceable as to the issue raised, whether because the waiver was not knowing and intelligent or for some other reason. (*People v. Espinoza* (2018) 22 Cal.App.5th 794, 803.)

Defendant makes such an argument, asserting that his appellate waiver does not preclude our review of his claim because he waived his appellate rights before the court found a factual basis for the plea, and an appellate waiver of appeal rights does not apply to “ ‘ “future error[s] [that are] outside the defendant’s contemplation and knowledge at the time the waiver is made.” ’ ” (*People v. Mumm* (2002) 98 Cal.App.4th 812, 815.)

Under the circumstances, we exercise our authority to address the merits of defendant’s appellate contention.

### II

Defendant claims the trial court erred by accepting a plea that lacked a sufficient factual basis. He argues the factual basis failed to demonstrate that he committed any other act while impersonating Larry V., a necessary element of the crime of false impersonation.

Section 529, subdivision (a)(3) makes it punishable for a person to impersonate another individual and, in that assumed character, to do any other act that might expose the other person to prosecution or liability, or that might benefit the impersonator. (§ 529, subd. (a)(3); *People v. Stacy* (2010) 183 Cal.App.4th 1229, 1234.) Defendant

argues his continued possession of the methamphetamine pipe cannot constitute the other act required by the statute because he possessed the pipe before providing false identifying information. But defendant continued his impersonation of Larry V. even after the methamphetamine pipe was discovered, making this case more like *People v. Chardon* (1999) 77 Cal.App.4th 205. In that case the defendant offered her sister's name during a traffic stop, then signed her sister's name to a citation's promise to appear. (*Id.* at pp. 208-209.) The court held the defendant's act of signing her sister's name on the citation's promise to appear was another act that exposed her sister to further criminal liability. (*Id.* at p. 212.)

In any event, although a factual inquiry is a necessary component of the legality of a plea proceeding (*People v. Marlin* (2004) 124 Cal.App.4th 559, 571), a trial court may satisfy itself that there is a factual basis for the plea based on a sufficient stipulation. (*Id.* at pp. 571-572.) Moreover, the trial court need not obtain an element-by-element factual basis but need only obtain a *prima facie* factual basis for the plea, and we review the trial court's acceptance of the defendant's no contest plea for abuse of discretion. (*Id.* at p. 572; see *People v. Holmes* (2004) 32 Cal.4th 432, 441 [the trial court does not "have to be convinced of defendant's guilt" to accept the factual basis for a guilty or no contest plea].)

On this record, based on the totality of the circumstances, we conclude the trial court did not abuse its discretion. The factual basis indicated that defendant was identified as a suspect of shoplifting, impersonated Larry V., was found in possession of a methamphetamine pipe, and then continued to impersonate Larry V., compounding the liability and punishment to which Larry V. might have been subjected. Defendant's counsel stipulated to the factual basis for the plea, and defendant's no contest plea is deemed to constitute a judicial admission of every element of the offense charged. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895.) On this record, defendant's challenge lacks merit.

DISPOSITION

The judgment is affirmed.

/S/  
MAURO, J.

We concur:

/S/  
BLEASE, Acting P. J.

/S/  
HULL, J.